TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. 236.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN A. CORBETT, GIDEON E. NEWMAN, AND LEROY E. McGILL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED AUGUST 11, 1909.

(21301)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 505.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN A. CORBETT, GIDEON E. NEWMAN, AND LEROY E. McGILL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

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53063—08——1

a District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, AND LeROY E. McGILL, defendants.

Mr. Walter C. Owen, special assistant to the Attorney-General.
Messrs. William G. Wheeler and Henry H. Morgan, United States attorneys, Western District of Wisconsin.
Messrs. John Barnes and T. J. Connor, attorneys for defendants.

b In District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, AND LeROY E. McGILL, defendants.

To F. W. Oakley, esquire, clerk of the United States District Court for the Western District of Wisconsin:

In preparing the transcript of record on writ of error in the above-entitled cause you will please include in said record the following papers, namely:

1. The indictment of John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, filed March 18, 1908.
2. The motion of the defendants to quash said indictment, filed June 4, 1908.
3. The demurrer to said indictment, filed June 4, 1908.
4. The order sustaining the motion to quash portions of the indictment, filed June 5, 1908.
5. The order sustaining the demurrer to the indictment, filed June 5, 1908.
6. The opinion of the court, filed June 5, 1908.
7. The petition for a writ of error, filed June 25, 1908.
8. The assignment of errors, filed June 25, 1908.
9. The writ of error, filed June 25, 1908.
10. The citation, filed June 25, 1908.
11. Certificate.

WALTER C. OWEN,
Special Assistant to the Attorney-General.
WILLIAM G. WHEELER,
HENRY H. MORGAN,
United States Attorneys, Western District of Wisconsin.

1 (Indorsed:) District Court of United States, Western District of Wisconsin. United States of America *vs.* John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, defendants.

Precipe for transcript of record. Filed June 25, 1908, F. W. Oakley, clerk. Walter C. Owen, special ass't to Atty-Gen'l. William G. Wheeler and Henry H. Morgan, United States attorneys, Western District of Wisconsin.

2 District Court of the United States for the Western District of Wisconsin.

At the term of the District Court of the United States of America for the Western District of Wisconsin, begun and held at the city of Eau Claire in said district, on the 1st Tuesday of June, A. D. 1908. Sanborn, D. J.

Among other, the following proceedings were had, to wit:

THE UNITED STATES *vs.* JOHN A. CORBETT, GIDEON E. Newman, and LeROy E. McGILL.	No. 118. Criminal F.

Be it remembered that heretofore, to wit, March 18, 1908, came the grand jury into court and presented a true bill of indictment against John A. Corbett, Gideon E. Newman, and LeRoy E. McGill for making false entries in a report to the Comptroller of the Currency and aiding and abetting the same, in violation of section 5209, R. S. U. S., as follows, to wit:

3 District Court of the United States of America for the Western District of Wisconsin.

At a regular term of the District Court of the United States of America for the Western District of Wisconsin, begun and held at the city of Madison, within and for the district aforesaid, on the third day of December, in the year of our Lord one thousand nine hundred and seven.

WESTERN DISTRICT OF WISCONSIN, *ss.*

The grand jurors of the United States of America, within and for the district aforesaid, upon their oath, present, that at all times hereinafter mentioned the First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett, late of Ladysmith, in the county of Gates, in the said Western District of Wisconsin, was, on the 20th day of March, in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed

by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the said grand jurors aforesaid, upon their oath aforesaid, do further
4 present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said Western District of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a certain false entry under the head of "Loans and discounts" in said report in the words and figures following, to wit: "Included in the above are—G. Bad debts, as defined in section 5204, Revised Statutes—$100.00," and which said entry so made as aforesaid then and there purported to show, and did in substance and effect declare, that the amount of bad debts included in the resources of said association, as defined by section 5204 of the Revised Statutes of the United States, was one hundred dollars ($100.00), whereas, in truth and in fact, there were bad debts then included among the loans and discounts of said bank in a different and much larger amount, to wit, in the sum of seven hundred and ninety-nine dollars and eighteen cents ($799.18), with intent thereby to injure and defraud the said First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do further present, that one Gideon E. Newman and one Leroy E. McGill, being then and there directors, and respectively president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbett, cashier of said association, so as aforesaid, to make said false entry in manner and form aforesaid, to do and commit; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States of America.

Second count. The grand jurors aforesaid, upon their oath, further present, that at all times hereinafter mentioned, the
5 First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett was,

on the 20th day of March, in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the said grand jurors aforesaid, upon their oath aforesaid, do further present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said Western District of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a certain false entry under the head of "Loans and discounts" in said report in the words and figures following, to wit: "Included in the above are—H. Other suspended and overdue paper—None," and which said entry so made as aforesaid then and there purported to show, and did in substance and effect declare, that there was no suspended and overdue paper included in the resources of said association other than the bad debts as defined in section 5204 of the Revised Statutes of the United States, whereas, in truth and in fact, there was a large amount of suspended and overdue paper, other than the bad debts as defined as aforesaid, to wit, in the sum of nine thousand
6 nine hundred and eighty-eight dollars and fifty-three cents ($9,988.53), with intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do further present, that one Gideon E. Newman and one Leroy E. McGill, being then and there directors, and respectively president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbett, cashier of said association, so as aforesaid, to make said false entry in manner and form aforesaid, to do and commit; contrary to the form of the statute in such case made and provided,

and against the peace and dignity of the said United States of America.

Third count. The grand jurors aforesaid, upon their oath, further present that at all times hereinafter mentioned the First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett was, on the 20th day of March, in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made
7 in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the said grand jurors aforesaid, upon their oath aforesaid, so further present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said Western District of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a certain false entry under the head of "Liabilities of officers and directors" in said report in the words and figures following, to wit:

Names of officers and directors.	Official title.	Liability (individual or firm) as payers.	Liability (individual or firm) as indorsers or guarantors.	Overdrafts.	No. of shares stock owned.
G. E. Newman ...	President	401	427.78	.....	75

and which said entry so made as aforesaid then and there purported to show and did in substance and effect declare that the said G. E. Newman, then president of said First National Bank of Ladysmith, was liable to the bank as indorser or guarantor on notes to the amount of four hundred and twenty-seven dollars and seventy-eight cents ($427.78), whereas, in truth and in fact, he was liable in a much larger sum of money, to wit, to the amount of nine hundred and eighty-nine dollars and eighty-nine cents ($989.89), with intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do

further present that one Gideon E. Newman and one Leroy E. McGill, being then and there directors, and respectively president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of
8 Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbett, cashier of said association, so as aforesaid, to make said false entry in manner and form aforesaid, to do and commit; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States of America.

Fourth count. The grand jurors aforesaid, upon their oath, further present, that at all times hereinafter mentioned, the First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett was, on the 20th day of March, in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the said grand jurors, upon their oath aforesaid, do further present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said Western District of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a
9 certain false entry under the schedule of "Other real estate owned" in said report in the words and figures following, to wit:

Describe property, state form of conveyance, and from whom obtained.	Amount at which carried on books.	Amount of prior lien on property, if any.	Estimated actual value of property.	Date when title was acquired.	State whether taken for "debts previously contracted."
40 acres, w. deed, M. T. Davis, 40 cont. All above in Gates County.	523.38	.....	1,000	June 20, '03	All for debts previous contracted.

and which said entry so made as aforesaid then and there purported to show, and did in substance and effect declare, that said banking association owned forty acres of real estate, the title to which was derived from one M. T. Davis, whereas, in truth and in fact, the said banking association then owned no real estate to which it derived title from M. T. Davis, but that in truth and in fact the same land to which the entry referred was held by said banking association as security for an indebtedness then existing and owing by the said M. T. Davis to the said First National Bank of Ladysmith, with intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do further present, that one Gideon E. Newman and one Leroy E. McGill, being then and there directors, and respectively president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbett, cashier of said association, so as aforesaid, to make said false entry in manner and form aforesaid, to do and commit; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States of America.

Fifth count. The grand jurors aforesaid, upon their oath, further present that at all times hereinafter mentioned the First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett was, on the 20th day of March, in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier, of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the grand jurors aforesaid, upon their oath aforesaid, do further present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord

one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said Western District of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a certain false entry under the schedule of "Other real estate owned," in said report, in the words and figures following, to wit:

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Describe property, state form of conveyance, and from whom obtained.	Amount at which carried on books.	Amount of prior lien on property, if any.	Estimated actual value of property.	Date when title was acquired.	State whether taken for "debts previously contracted."
Sheriff sale, Level Land Swivel Plow Co. All above in Gates County.	631.27	.....	1,500	Mch. 14,'04	All for debts previous contracted.

and which said entry so made as aforesaid then and there purported to show, and did in substance and effect declare, that said banking association owned certain real estate, the title to which was derived from the Level Land Swivel Plow Company, whereas, in truth and in fact, the said banking association then owned no real estate to which it derived title from the Level Land Swivel Plow Company, but that in truth and in fact the same land to which the entry referred was held by said banking association as security for an indebtedness then existing and owing by the said Level Land Swivel Plow Company to the said First National Bank of Ladysmith, with intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do further present, that one Gideon E. Newman and one Leroy E. McGill, being then and there directors, and, respectively, president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbett, cashier of said association, so as aforesaid to make said false entry in manner and form aforesaid, to do and commit, contrary to the form of the
12 statute in such case made and provided, and against the peace and dignity of the said United States of America.

Sixth count. The grand jurors aforesaid, upon their oath, further present, that at all times hereinafter mentioned, the First National Bank of Ladysmith was a national banking association, which had before that time been created and organized under and by virtue of the laws of the United States of America concerning national banks; that one John A. Corbett was, on the 20th day of March,

in the year of our Lord one thousand nine hundred and five, an officer, to wit, the cashier of the said First National Bank of Ladysmith, and that the said association on the day last aforesaid there made and transmitted to the then Comptroller of the Currency of the said United States a certain report of the condition of said association at the close of business on the 14th day of March, 1905, according to a certain form theretofore prescribed by the Comptroller of the Currency of the said United States for the time being, which said report was a report which it was then and there by law the duty of the said association to make and transmit to the said Comptroller, and was, to wit, one of the five reports before that time and then required by law to be made in each year by every such association, and which report was then and there verified by the oath of the said cashier of the same association, and attested by the signatures of three of the then directors thereof; and the grand jurors aforesaid, upon their oath aforesaid, do further present that the said John A. Corbett, so being cashier of the said association on the said 20th day of March, in the year of our Lord one thousand nine hundred and five, within the city of Ladysmith and county of Gates, and within said western district of Wisconsin, did unlawfully make a certain false entry in said report so made as aforesaid, that is to say, a certain false entry under the schedule of "Other real estate owned," in said report, in the words and figures following, to wit:

13

Describe property, state form of conveyance and from whom obtained.	Amount at which carried on books.	Amount of prior lien on property, if any.	Estimated actual value of property.	Date when title was acquired.	State whether taken for "debts previously contracted.
Deed, O. E. Pederson, 900 acres. All above in Gates County.	2,500		5,000	Dec. 22, '04.	All for debts previous contracted.

and which said entry so made as aforesaid then and there purported to show, and did in substance and effect declare, that said banking association owned nine hundred acres of real estate, the title to which was derived from one O. E. Pederson, whereas, in truth and in fact, the said banking association then owned no real estate to which it derived title from O. E. Pederson, but that in truth and in fact, the same land to which the entry referred was held by said banking association as security for an indebtedness then existing and owing by the said O. E. Pederson to the said First National Bank of Ladysmith, with intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States; and the grand jurors aforesaid, upon their oath aforesaid, do further present, that one Gideon E. Newman

and one Leroy E. McGill, being then and there directors, and respectively president and vice-president of the said banking association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith, within said Western District of Wisconsin, unlawfully, and with intent as aforesaid to injure and defraud the said banking association, and to deceive the said Comptroller of the Currency of the United States of America, did aid, abet, incite, counsel, and procure the said John A. Corbet, cashier of said association, so as aforesaid, to do and commit; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United
14 States of America.

WALTER C. OWEN,
Special Assistant to the Attorney-General of the United States.
WILLIAM G. WHEELER,
HENRY H. MORGAN,
United States Attorneys, Western District of Wisconsin.

(Indorsed:) No. 118 F. United States District Court, Western District of Wisconsin. The United States vs. John A. Corbett, Gideon E. Newman, and LeRoy E. McGill. Indictment for making false entries in a report to the Comptroller of the Currency and aiding and abetting the same. Vio. sec. 5209, R. S. U. S. Witnesses: P. J. Earling, Theodore M. Thomas, Clarence Knudson, John W. Brown, M. G. Davis. A true bill. A. R. Ames, foreman grand jury. Filed Mar. 18, 1908. F. W. Oakley, clerk. Wm. G. Wheeler and H. H. Morgan, U. S. attorneys. W. C. Owen, special assistant to the Attorney-General of the United States.

15 Afterwards, to wit, June 4, 1908, came the defendants, by their attorneys, John Barnes and T. J. Connor, and filed their motion to quash the indictment, as follows, to wit:

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

THE UNITED STATES
against
JOHN A. CORBETT, GIDEON E. NEWMAN, and LeROY E. McGILL.

And now come the defendants, John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, by their counsel, and move the court to quash so much of and that part and allegation of the first count of the indictment which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a banking association, to

wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;"

and also so much of and that part and allegation of said first count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith within said Western District of Wisconsin, unlawfully and with intent as aforesaid to deceive the said
16 Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit,"

for the reason that said allegations, and each of them are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer said allegations.

And said defendants, and each of them, further move the court to quash so much of and that part and allegation of the second count of said indictment which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a banking association, to wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;"

and also so much of and that part and allegation of said second count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at

said Ladysmith, within said Western District of Wisconsin, unlawfully and with intent as aforesaid to deceive the said Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit,"

17 for the reason that said allegations, and each of them, are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer said allegations.

And said defendants, and each of them, further move the court to quash so much of and that part and allegation of the third count of said indictment which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a banking association, to wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States:"

and also so much of and that part and allegation of said third count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States, with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith within said Western District of Wisconsin, unlawfully and with intent as aforesaid to deceive the said Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit,"

for the reason that said allegations, and each of them, are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer such allegations.

18 And said defendants, and each of them, further move the court to quash so much of and that part and allegation of the fourth count of said indictment, which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a bank-

ing association, to wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;"

and also so much of and that part and allegation of said fourth count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States, with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith within said Western District of Wisconsin, unlawfully and with intent as aforesaid to deceive the said Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit,"

for the reason that said allegations, and each of them, are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer such allegations.

19 And said defendants, and each of them, further move the court to quash so much of and that part and allegation of the fifth count of said indictment which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a banking association, to wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;"

and also so much of and that part and allegation of said fifth count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States, with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at

said Ladysmith, within said Western District of Wisconsin, unlawfully and with intent as aforesaid to deceive the said Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit,"

for the reason that said allegations, and each of them, are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer such allegations.

20 And said defendants, and each of them, further move the court to quash so much of and that part and allegation of the sixth count of said indictment which charges the defendant, John A. Corbett, with having violated the laws of the United States by making the alleged false entries in said indictment set forth, with intent to deceive an agent appointed to examine the affairs of a banking association, to wit, the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"And to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;"

and also so much of and that part and allegation of said sixth count of said indictment as charges the defendants, Gideon E. Newman and LeRoy E. McGill, with an offense against the laws of the United States, with aiding and abetting said defendant, John A. Corbett, in making the alleged false entries set out in said indictment, with intent to deceive the Comptroller of the Currency of the United States, which said allegation is in words as follows, to wit:

"That one Gideon E. Newman and one LeRoy E. McGill, being then and there directors and respectively president and vice-president of the said bank and association aforesaid, in the city and district aforesaid, heretofore, to wit, on the day and year last aforesaid, at said Ladysmith within said western district of Wisconsin, unlawfully and with intent as aforesaid to deceive the said Comptroller of the United States of America, did aid, abet, incite, counsel, and procure said John A. Corbett, cashier of said association so as aforesaid, to make said false entry in the manner and form aforesaid to do and commit;"

for the reason that said allegations, and each of them, are insufficient in law and do not state any offense against the laws of the United States, and for the reason that the defendants are not bound by the law of the land to answer such allegations.

JNO. BARNES & T. J. CONNOR,
Attorneys for Defendants.

21 (Indorsed:) 118 F. United States of America, Western District of Wisconsin. The United States *vs.* John A. Corbett, Gideon E. Newman, and LeRoy E. McGill. Motion to quash indictment. Filed June 4, 1908. F. W. Oakley, clerk.

Afterwards, on same day, to wit, June 4, 1908, came the defendants, by their attorneys, and filed their demurrer to the indictment, as follows, to wit:

THE UNITED STATES OF AMERICA,
Western District of Wisconsin, ss.

THE UNITED STATES
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, and LeROY E. McGILL, defendants.

And now come into court in their own proper persons John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, and each of them, and, having heard said indictment read, say that the first count thereof, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the land to answer the same, and this they, and each of them, are ready to verify.

22 And said defendants further say that the second count of said indictment, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the land to answer the same, and this they, and each of them, are ready to verify.

And said defendants further say that the third count of said indictment, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the land to answer the same, and this they, and each of them, are ready to verify.

And said defendants further say that the fourth count of said indictment, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the land to answer the same, and this they, and each of them, are ready to verify.

And said defendants further say that the fifth count of said indictment, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the

land to answer the same, and this they, and each of them, are ready to verify.

And said defendants further say that the sixth count of said indictment, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law, and that they, the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, or either or any of them, are not bound by the law of the land to answer the same, and this they, and each of them, are ready to verify.

Wherefore, for want of sufficient indictment in this behalf,
23 the said John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, and each of them, prays judgment that he may be dismissed and discharged by the court from the said premises in said indictment specified.

JNO. BARNES & T. J. CONNOR,
Attorneys for Defendants.

(Indorsed:) 118 F. United States of America, Western District of Wisconsin. The United States vs. John A. Corbett, Gideon E. Newman, and LeRoy E. McGill. Demurrer to indictment. Filed June 4, 1908. F. W. Oakley, clerk.

Afterwards, to wit, June 5, 1908, ordered filed and entered quashing portions of indictment, as follows, to wit:

24 UNITED STATES DISTRICT COURT,
Western District of Wisconsin.

THE UNITED STATES,
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, and LeROY E. McGILL.

Now come the defendants and ask leave to withdraw their pleas of not guilty and renew their motion to quash parts of the indictment, whereupon the motion of the defendants to quash a part of the first, second, third, fourth, fifth, and sixth counts of the indictment herein came on to be heard and was argued by counsel, whereupon it was ordered that the parts of said counts to which said motion to quash relates, be, and the same are hereby, quashed and held insufficient in law.

By the court.

A. L. SANBORN, *Judge.*

Dated June 5, 1908.

(Indorsed:) No. 118 Crim. F. United States District Court, Western District of Wisconsin. The United States vs. John A. Corbett, Gideon E. Newman, and LeRoy E. McGill. Order quashing portions of indictment. Filed June 5, 1908. F. W. Oakley, clerk.

25 Afterwards, on same day, to wit, June 5, 1908, order filed and entered sustaining demurrer, as follows, to wit:

UNITED STATES DISTRICT COURT,
Western District of Wisconsin.

THE UNITED STATES
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, and LE ROY E. McGILL.

The motion to quash parts of all the counts of the indictment having been heard and sustained, and the defendants having thereafter filed a demurrer, and the same having been argued by counsel, it was thereupon ordered that the said demurrer be, and the same is hereby, sustained, and the said indictment held insufficient as a matter of law.

By the court:

A. L. SANBORN, *Judge.*

Dated June 5, 1908.

(Indorsed:) No. 118 Crim. F. United States District Court, Western District of Wisconsin. The United States *vs.* John A. Corbett, Gideon E. Newman, and Le Roy E. McGill. Order sustaining demurrer. Filed Jun. 5, 1908. F. W. Oakley, clerk.

Afterwards, on same day, to wit, June 5, 1908, filed opinion, as follows, to wit:

26 United States District Court, Western District of Wisconsin.

THE UNITED STATES
vs.
JOHN A. CORBETT ET AL.

Motion to quash portions of each count of the indictment and demurrer to the rest of such counts.

This is a prosecution, under section 5209, for making false entries in a certain report made by defendants. Each count charges that the entry in question was false, and was made with intent to deceive an agent appointed to examine the affairs of the association, to wit, the Comptroller of the Currency of the United States. The question is whether any offense under the laws of the United States is thus charged.

That part of section 5209 creating the offense of making false entries in reports of national bank officers is as follows:

"Every president, director, or agent of any association who makes any false entry in any book, report, or statement of the association, with intent to injure or defraud the association, or to deceive any agent appointed to examine the affairs of any such association, shall be deemed guilty," etc.

The first question is whether the Comptroller of the Currency is an agent appointed to examine the affairs of the bank. The only duty charged by the statute upon the Comptroller is to receive and publish the report. The law does not make it his duty to examine the bank affairs. The receiving, reading, and publication of the report is not an examination of the affairs of the bank. The national banking act of June 3, 1864, of which section 5209 is a part, provided that the Comptroller should appoint suitable persons to make an examination of the affairs of every banking association, who should have power to make a thorough examination into all the affairs of the association, and who might examine any of the officers or agents thereof under oath; and who should make a full and detailed report to the Comptroller of the condition of the association (section 5240). It was not until Jan. 20, 1873, that the Comptroller was given any power
27 to examine national banks, and such power was restricted to banks in the District of Columbia (sec. 332).

It seems entirely clear that the person appointed to examine the affairs of a bank is one of the examiners so to be appointed, and who have now become a permanent force of the Department, and not the Comptroller of the Currency, who is only to receive and publish the report. The statute is highly penal, and can not be extended by construction. The conclusion reached is sustained by United States v. Barteau, 10 Fed., 874, and Clement v. United States, 149 Fed., 305, 316. While the point may have been involved in Cochran v. United States, 157 U. S., 286, 39 L. ed., 704, 15 S. Ct., 628, yet it is not there discussed nor decided.

It is also plain in this case that it would have availed nothing in drawing the indictment to have charged that the false entries were made with intent to deceive one of the examiners appointed under section 5240, because the Government could not have shown any statute or practice under which the report sent to the Comptroller is shown or delivered to any such examiner, or that the defendants had any knowledge that such report would ever be seen or come to the hands of such an examiner. In other words, the indictment was drawn upon the only theory by which it could possibly have been sustained by proof.

The indictment also charges that the entries were made with intent to injure and defraud the bank itself, but how this could be does not appear. It is barely possible that some harm might indirectly have come to the bank by the publication of the false report in the vicinity of the place where the bank was located, but this possibility is not sufficient to show the definite intent shown by the statute. The report must have been made with the purpose on the part of those signing it to injure and defraud the bank. The report could not possibly change the actual condition of the bank, and a false report showing a better condition than in fact existed might as readily be a benefit to the bank as a detriment. At all events, the detriment would be merely speculative, insufficient to afford proof of a positive intent to injure and defraud the bank.

By a recent statute the case may be reviewed by writ of error on the part of the United States, at this stage, and for that rea-
28 son the matter should be disposed of now, before the defendants have been put in jeopardy, rather than by arrest of judgment, after a possible conviction.

A. L. SANBORN, *Judge.*

(Indorsed:) No. 118 Crim. F. United States District Court, Western District of Wisconsin. The United States vs. John A. Corbett et al. Opinion, Sanborn, J. Filed June 5, 1908. F. W. Oakley, clerk.

Afterwards, to wit, June 25, 1908, came the United States of America, by Walter C. Owen, special assistant to the Attorney-General, and William G. Wheeler and Henry H. Morgan, United States attorneys for the Western District of Wisconsin, and filed petition for writ of error, as follows, to wit:

In District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, AND
Le Roy E. McGILL, defendants.

And now comes the United States of America, and come also Walter C. Owen, special assistant to the Attorney-General, and William G. Wheeler and Henry H. Morgan, United States attorneys for the Western District of Wisconsin, on behalf of the United States of America, and say:

29 That on or about the 5th day of June, 1908, the District Court of the United States for the Western District of Wisconsin entered a decision and judgment quashing parts of the first, second, third, fourth, fifth, and sixth counts of the indictment herein, and on the same day entered also a decision and judgment sustaining a demurrer to all of the counts of said indictment, and which decision and judgment was based upon the construction of section 5209 of the Revised Statutes of the United States, upon which section the indictment in said case against said defendants is founded, and in which decisions and judgment entered in this cause certain errors were committed to the prejudice of the United States, all of which will more fully appear from the assignment of errors, which is filed with this petition.

Wherefore the United States of America and Walter C. Owen, special assistant to the Attorney-General of the United States of America, and William G. Wheeler and Henry H. Morgan, United States attorneys as aforesaid, on behalf of the said United States of America, prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of and that a transcript of the record, proceedings,

and papers in this cause, duly authenticated, may be sent to
Supreme Court.

Dated June 25, 1908.

UNITED STATES OF AMERICA,
By WALTER C. OWEN,
Special Assistant to the Attorney-Gener
WILLIAM G. WHEELER,
HENRY H. MORGAN,
United States Attorneys, Western District of Wisconsi

The foregoing petition is allowed this 25th day of June, A. D. 1
A. L. SANBORN, *Judg*

30 (Indorsed:) 118 F. Crim. District Court of United St
Western District of Wisconsin. United States of Americ
John A. Corbett, Gideon E. Newman, and Le Roy E. McGill, def
ants. Petition for writ of error. Filed June 25, 1908. F. W. Oal
clerk. Walter C. Owen, special ass't to Atty.-Gen'l. Willian
Wheeler and Henry H. Morgan, United States attorneys, Wes
District of Wisconsin.

On same day, to wit, June 25, 1908, filed assignment of error
follows, to wit:

In District Court of the United States, Western Distract
Wisconsin.

UNITED STATES OF AMERICA
vs.
JOHN A. CORBETT, GIDEON E. NEWMAN, and Le Roy E. McGill, defendants.

And now comes the United States of America by Walter C. O
special assistant to the Attorney-General, and William G. Whe
and Henry H. Morgan, United States attorneys for the W
31 ern District of Wisconsin, and says:

That in the record and proceedings in the above enti
matter there is manifest error, in this, to wit:

1. That the court erred in its decision and judgment sustainin
motion to quash portions of the indictment herein.

2. The court erred in its decision and judgment sustaining a
murrer to the indictment herein.

3. The court erred in its decision and judgment construing sec
5209 of the Revised Statutes of the United States upon which
indictment herein is founded.

UNITED STATES OF AMERICA,
By WALTER C. OWEN,
Special Assistant to the Attorney-Gener
WILLIAM G. WHEELER,
HENRY H. MORGAN,
United States Attorneys, Western District of Wisconsi

(Indorsed:) 118 F. Crim. District Court of United States, W
ern District of Wisconsin. United States of America vs. John

Corbett, Gideon E. Newman, and Le Roy E. McGill, defendants. Assignment of errors. Filed June 25, 1908. F. W. Oakley, clerk. Walter C. Owen, special ass't to Atty.-Gen'l. William G. Wheeler and Henry H. Morgan, United States attorneys, District of Western Wisconsin.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable, the judge of the District Court of the United States for the Western District of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you, wherein the United States of America is plaintiff, and John A. Corbett, Gideon E. Newman, and Leroy E. McGill are defendants, in the matter of the prosecution of the United States of America against the said John A. Corbett, Gideon E. Newman, and Leroy E. McGill for the making of certain false entries in a certain report of a banking association organized under the acts of Congress of the United States, to wit, the First National Bank of Ladysmith, Wisconsin, and which said report was made to the Comptroller of the Currency of the United States, and which false entries hereinbefore referred to are alleged to have been made in violation of the provisions of section 5209 of the Revised Statutes of the United States, a manifest error hath happened to the great damage of the United States of America, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, shall be corrected and full and speedy justice done to the party aforesaid in this behalf, do command you if decision or judgment be therein given quashing or sustaining a demurrer to the indictment herein, and if such decision or judgment is based upon the construction of the statute upon which said indictment is founded, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington in the District of Columbia, within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what, of right and according to the laws and customs of the United States, should be done.

33

Witnesseth, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of June, A. D. 1908.

[SEAL.]

F. W. OAKLEY,
Clerk of the United States Circuit Court for the Western District of Wisconsin.

Allowed by
A. L. SANBORN, *Judge.*

34 (Indorsed:) 118 F. Crim. District Court of United States. Western District of Wisconsin. United States of America vs. John A. Corbett, Gideon E. Newman, and Leroy E. McGill. Writ of error. Filed June 25, 1908. F. W. Oakley, clerk. Walter C. Owen, special ass't to Atty.-Gen'l. William G. Wheeler and Henry H. Morgan, United States attorneys, Western District of Wisconsin.

35 In obedience to the within writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the foregoing entitled action this 22nd day of July, 1908.

[SEAL.] F. W. OAKLEY,
Clerk of the District Court of the United States for the Western District of Wisconsin.

Copy of writ of error deposited for the defendants in error in the office of the clerk of the District Court of the United States for the Western District of Wisconsin, at Madison, Wisconsin.

The answer of the judge of the District Court of the United States for the Western District of Wisconsin, Seventh Judicial Circuit.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, I certify under seal of said court to the Supreme Court of the United States within mentioned at the day and place within contained in a certain schedule to this as within I am commanded.

By the court:

[SEAL.] F. W. OAKLEY, *Clerk.*

Citation issued June 25, 1908, in within entitled cause, as follows, to wit:

36 *United States of America to John A. Corbett, Gideon E. Newman, and Leroy E. McGill:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Western District of Wisconsin, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decision and judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witnesseth the Honorable Arthur L. Sanborn, judge of the District Court of the United States for the Western District of Wisconsin, this 25th day of June, A. D. 1908.

A. L. SANBORN, *Judge.*

37 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I hereby certify and return that on the 29th day of June, A. D. 1908, at the city of Ladysmith and county of Rusk, in the State of Wisconsin, I served the within citation personally on the defendants, Gideon E. Newman and Leroy E. McGill, by delivering to and leaving with them true copies thereof. I further certify that on said 29th day of June, A. D. 1908, at Chippewa Falls, in Chippewa County, Wisconsin, I served the within citation on T. J. Connor, the attorney for the defendants, by delivering to and leaving with said T. J. Connor a true copy thereof.

I further certify and return that the defendant, John A. Corbett, could not be found within the Western District of Wisconsin.

Dated at Madison, June 30th, 1908.

R. J. FLINT, *U. S. Marshal*,
By W. T. PUGH, *Deputy*.

38 (Indorsed:) 118 F. Crim. District Court of the United States, Western District of Wisconsin. United States of America vs. John A. Corbett, Gideon E. Newman, and Leroy E. McGill, defendants. Citation. Walter C. Owen, special ass't to Atty.-Gen'l. William G. Wheeler and Henry H. Morgan, United States attorneys, Western District of Wisconsin. Filed July 1, 1908. F. W. Oakley, clerk.

39 *United States of America to John A. Corbett, Gideon E. Newman, and LeRoy E. McGill:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Western District of Wisconsin, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decision and judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witnesseth the Honorable Arthur L. Sanborn, judge of the District Court of the United States for the Western District of Wisconsin, this 25th day of June, A. D. 1908.

A. L. SANBORN, *Judge*.

40 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, clerk of the District Court of the United States of America for the Western District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, with the originals now in my custody, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said Western District of Wisconsin, this 2nd day of July, in the year of our Lord one thousand nine hundred and eight, and of the independence of the said United States the one hundred and thirty-second.

[SEAL.] F. W. OAKLEY, *Clerk.*

41 *Return on service of writ.*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed citation on the therein-named John A. Corbett, by handing to and leaving a true and correct copy thereof with the said John A. Corbett personally, at Seattle in said district on the 6th day of July, A. D. 1908.

C. B. HOPKINS, *U. S. Marshal.*
By I. J. CRABTREE, *Deputy.*

Fees, $2.00.

42 (Indorsed:) No. 118. F. Crim. District Court of United States, Western District of Wisconsin. United States of America vs. John A. Corbett, Gideon E. Newman, and LeRoy E. McGill, defendants. Citation. Certified copy. Filed Jul. 21, 1908. F. W. Oakley, clerk.

43 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, clerk of the District Court of the United States for said district, do hereby certify that I have compared the foregoing transcript of record with the original records of this court now remaining of record in my office in the case therein lately pending of the United States of America versus John A. Corbett, Gideon E. Newman, and Le Roy E. McGill, defendants, and that the same is a correct transcript therefrom. I further certify that the writ of error and citation in error, with admission of service thereon, hereto annexed, are the original writ of error and citation in error, with admission of service, granted in said cause.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said Western District of Wisconsin, this 22nd day of July, in the year of our Lord one thousand nine hundred and eight, and of the independence of the said United States the one hundred and thirty-second.

[SEAL.] F. W. OAKLEY, *Clerk.*

(Indorsement on cover:) File No. 21301. W. Wisconsin, D. C. U. S. Term No. 505. The United States, plaintiff in error, vs. John A. Corbett, Gideon E. Newman, and Leroy E. McGill. Filed August 11th, 1908. File No. 21301.

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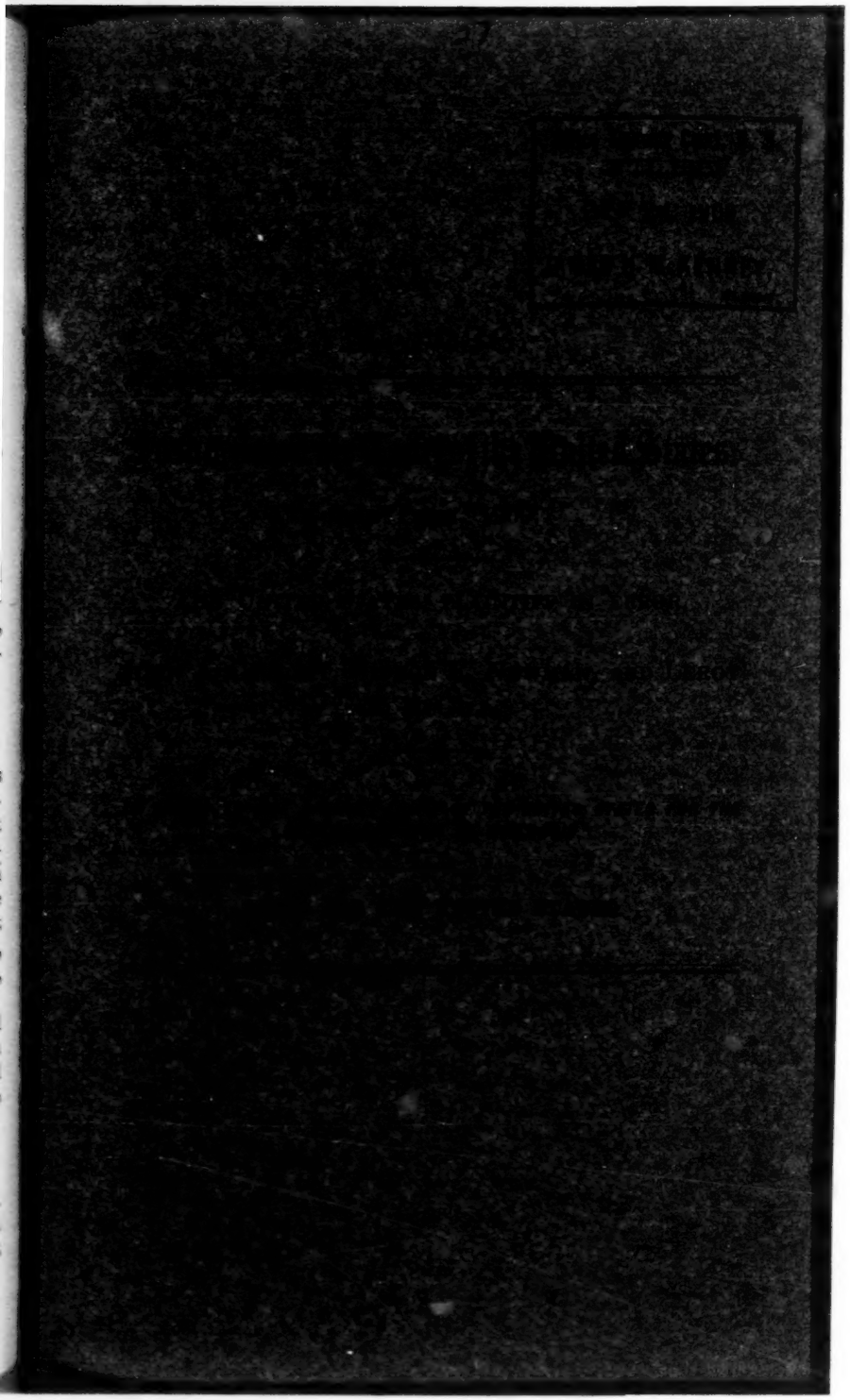

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE UNITED STATES, PLAINTIFF IN error, *v.* JOHN A. CORBETT, GIDEON E. NEWman, and Leroy E. McGill.	No. 236.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The indictment in this case contains six counts, each count being based on a false entry made in a report to the Comptroller of the Currency of the condition of the First National Bank of Ladysmith, Wis., on March 14, 1905, the report being dated March 20, 1905. It is alleged that defendant John A. Corbett was at said time cashier, and that defendants Gideon E. Newman and Leroy E. McGill were president and vice-president of said bank, and Corbett is indicted

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as principal and Newman and McGill as aiders and abettors.

The first count is based on an entry which showed that there were only $100 of bad debts, when in fact it is alleged there were $799.18 of such debts; the second count on an entry which showed there were no suspended or overdue paper in the resources of the bank, when in fact there were $9,988.53 of such paper; the third count on an entry which showed that the president, Newman, was liable to the bank as indorser and guarantor in the sum of $427.78, when he was so liable in the sum of $989.89; the fourth count on an entry which showed that the bank owned 40 acres of land the title to which was derived for a preexisting debt from M. T. Davis, when it did not own said land, but held the title as security for an indebtedness then existing and owing by said Davis; the fifth count on an entry which showed that the bank owned a tract of land which was obtained for a prior indebtedness from the Level Land Swivel Plow Company, when it was not the owner of said tract, but held the title thereof as security for a debt then existing and owing by said plow company; and the sixth count on an entry which showed that the bank owned 900 acres of land which had been obtained for a preexisting debt from O. E. Pederson, when in fact the bank did not own said land, but held the title thereto as security for a debt then existing and owing by said Pederson.

It appears, therefore, that each of the false entries showed the affairs of the bank to be in a better condition than they really were. The purpose of the false entries is thus alleged in each of the counts:

> With intent thereby to injure and defraud the First National Bank of Ladysmith, and to deceive an agent appointed to examine the affairs of such association, to wit, the *Comptroller of the Currency of the United States;*

and it is alleged that Newman and McGill aided and abetted in making the false entries—

> with intent as aforesaid to injure and defraud the said banking association, and to deceive the said *Comptroller of the Currency of the United States of America*. (R., pp. 2–10.)

Defendants filed a motion to quash so much of each count of the indictment against the principal, Corbett, as alleged that the entry was made—

> to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States;

and also the entire portion of each count directed against the aiders and abettors Newman and McGill. (R., pp. 10–14.)

At the same time defendants filed a demurrer to the several counts of the indictment on the general ground that—

> the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law. (R., p. 15.)

In passing upon the motion to quash, and the demurrer, the court held:

(1) That the Comptroller of the Currency is not an agent appointed to examine the affairs of a national bank within the meaning of the statute, and therefore that it is not sufficient to allege that a false entry was made in a report with intent to deceive the comptroller;

(2) That it would have been of no avail to have alleged that the false entry was made to deceive an examiner appointed by the comptroller under section 5240, Revised Statutes, as the Government could not show any statute or practice under which the report sent to the comptroller is shown or delivered to any such examiner, or that the defendants had any knowledge that such report would ever be seen by or come to the hands of such examiner; and

(3) That "the report could not possibly change the actual condition of the bank, and a false report showing a better condition than in fact existed might as readily be a benefit to the bank as a detriment. At all events, the detriment would be merely speculative, insufficient to afford proof of a positive intent to injure and defraud the bank." (R., p. 18).

The demurrer was therefore sustained and the indictment held insufficient as a matter of law. (R., p. 17.)

The case has been removed by the United States to this court by writ of error under the provisions of the act of March 2, 1907 (34 Stat., 1246).

The material portion of section 5209, Revised Statutes, under which the indictment was drawn, reads as follows:

> Every president, director, cashier, teller, clerk, or agent of any association * * * who makes any false entry in any book, report, or statement of the association, with intent * * * to injure or defraud the association, * * * or to deceive * * * any agent appointed to examine the affairs of any such association, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section shall be deemed guilty of a misdemeanor * * *.

The effect of the holding of the court below is, that no officer is subject to indictment for inserting in a report to the comptroller any entry, which shows the affairs of the bank to be in a more favorable condition than they actually are, on the ground that the entry was made with intent to defraud or injure the association, or to deceive the Comptroller of the Currency.

In so holding, we insist, the court erred, and the judgment of the court below should be reversed for the following reasons:

I.

The court erred in not holding that the allegation in each count that the entry was made "with intent thereby to injure and defraud the First National Bank of Ladysmith" is sufficient to sustain the indictment.

By section 5211, Revised Statutes, it is provided that—

> Every association shall make to the Comptroller of the Currency not less than five

> reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business of any past day by him specified; and shall be transmitted to the comptroller within five days after the receipt or a request or requisition therefor from him.

Other statutes require that the capital of a bank shall not be impaired, that it shall keep a certain per cent of its aggregate deposits in reserve, that it shall not loan money on real estate or on its own shares of stock as security, and that other restrictions, which experience has taught to be essential to safe banking, shall be complied with.

A true history of the failures of national banks would show that they would almost invariably have been prevented by truthful reports to the comptroller. He must, in a very large measure, rely upon them to determine the true condition of the bank. They are made by the officers, who conduct the bank's business and are necessarily familiar with every transaction and know precisely its condition, and whether its affairs are being conducted in accordance with the banking laws. The periodical examinations made by the bank examiners must necessarily be cursory and unsatisfactory. They know nothing about the bank's business except as

shown, or often rather concealed, by a complicated set of books, and the length of time in which the examinations must be made will not permit them to conduct such an investigation as will enable them to report accurately as to the bank's condition.

When an officer of a bank begins to violate the law in the particulars mentioned, it is invariably covered up in false entries in the reports to the comptroller; and of course the condition of the bank is always shown in the report to be better than it actually is. This may continue even for years, the officer finding it easy to so manipulate the books as to conceal his criminal acts from the examiner. With a bank so conducted there is but one end, and that is insolvency, and great loss to its shareholders and depositors; when if the true condition of the bank were revealed to the comptroller by correct reports, he would either require that the law be strictly complied with or would suspend the operation of the bank before any financial loss could accrue.

These facts are so well known to those having experience in cases of this character, that it can be asserted with confidence, that the making of false entries in reports to the comptroller leads as inevitably to the injury of the association as do an abstraction of its funds.

Indeed, it is often by far the most serious of the two crimes. The abstraction of several thousand dollars may leave the bank perfectly solvent, while the false entries conceal a general policy of conducting the bank's business in defiance of the principles

of good banking and of the laws enacted to preserve its solvency, with the consequent result of total insolvency.

Since, therefore, the natural result of false entries in a report to the comptroller is an injury to the association, it is insisted that the officer making such entries and those aiding and abetting him in making them, should be conclusively presumed to intend such result, and that the allegation in each count of the indictment that the false entries were made with intent to injure the First National Bank of Ladysmith is sufficient to sustain its validity.

Mr. Justice Jackson, when circuit judge, clearly stated in *United States* v. *Harper* (33 Fed., 481, 482) the proper rule with reference to proof of the criminal intent under said section 5209, Revised Statutes, in the following language:

> What is required in order to establish this intent to "injure or defraud" the association? In directing that these offenses or the acts which constitute them must be committed with intent to injure or defraud the bank, the statute does not mean that it must be made to appear that the party accused had malice or ill will toward the association. These terms, as used in the statute, mean nothing more than that general intent to injure or defraud which always arises, in contemplation of law, when one willfully or intentionally does that which is illegal or fraudulent, and which in its necessary and natural consequence must injure another. So that while these offenses of em-

bezzling, of abstracting, and of willfully misapplying the moneys, funds, or credits of the bank and issuing and putting in circulation certificates of deposit without authority must be committed by the accused with intent to injure or defraud the association, *that intent* may be shown, or may be conclusively presumed, from the doing of the wrongful, fraudulent, and illegal acts, which in their necessary results naturally produce loss or injury to the association. The law presumes that every man intends the legitimate consequences of his acts. Wrongful acts knowingly or intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. This is the well-settled rule which the law applies in both civil and criminal cases involving the question of intent. Human affairs could hardly be conducted, nor civil order be preserved, under any other. If therefore, the funds, moneys, or credits of the Fidelity National Bank are shown to have been either embezzled, or abstracted, or willfully misapplied, or its certificates of deposit wrongfully put in circulation, as already explained, by the accused, and converted to his own use, whereby as a necessary, natural, or legitimate consequence the association's capital is reduced or placed beyond the control of its directors, or its ability to meet its engagements

> or obligations or to continue its business is lessened or destroyed, the intent to injure or defraud the bank may be conclusively presumed. Acts involving such consequences, when knowingly and wrongfully committed, establish not only the guilty intent to injure or defraud mentioned in the statute, but they disclose moral turpitude utterly inconsistent with an innocent intent.

But if it be thought that the intent to injure the association should not be *conclusively presumed* from the making of the false entries, yet it certainly should be left as a question of fact for the jury to determine whether or not such intent existed. If the making of false entries had been persistently followed, and they were made for the purpose of covering up other criminal acts upon the part of the officers, a jury would be warranted in finding that they were made with intent to injure the bank; while one false entry standing alone, and made by mistake or under other peculiar circumstances, might not warrant the finding of the criminal intent. But each case must present a question of fact which should be determined by a jury, unless the evidence be of such character that no inference of guilt could be drawn therefrom.

Therefore, it was error for the court below to hold that, as a matter of law, the facts alleged in the several counts of the indictment rebut the idea of an intent to injure the bank.

II.

The court erred in holding that the allegation in each count that the entry was made with intent "to deceive an agent appointed to examine the affairs of such association, to wit, the Comptroller of the Currency of the United States," is not sufficient to sustain the indictment.

Each examination of a bank is made by a person appointed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury, and the examinations are made as often as may be deemed necessary and proper. (Sec. 5240, R. S.)

The comptroller may, therefore, send an examiner to a bank at any time, and as many times as he may deem proper.

If the directors of an association shall knowingly violate or knowingly permit any of the officers, agents, or servants of the association to violate any of the banking laws, its charter may be forfeited by suit brought by the comptroller (sec. 5239, R. S.), and he shall appoint a receiver to take charge of and wind up its affairs. (Act June 30, 1876; 19 Stat., 63.)

In case a national bank fails to redeem its circulating notes the comptroller shall appoint a receiver to take charge of and liquidate its affairs. (Sec. 5234, R. S.) He shall likewise have a bank placed in the hands of a receiver on presentation of proper certificate that a judgment of a creditor remains unpaid for thirty days, and also when satisfied of its insolvency. (Act June 30, 1876; 19 Stat., 63.)

Every national bank, therefore, is under the supervision and control of the comptroller, it being his duty, through the reports of the president and cashier, and through examiners, to keep himself informed as to the exact condition of each bank, and, if he shall find one at any time in an insolvent condition, or that the law has been knowingly violated by its officers or agents, to have it placed in the hands of a receiver and its assets distributed. He, above all other persons, is concerned in the correctness of the reports made to him by the banks.

While a copy of the report is held by the bank under the orders of the comptroller, to be delivered to the examiner, that it may be checked up by him, and a false entry therein may thus deceive the examiner, yet it is the comptroller alone who must act upon the information disclosed in the report. It is apparent, therefore, that there is every reason why the statute should be so construed, if it will admit of such construction, as to make it an offense to make a false entry in a report to the comptroller, with intent to deceive the comptroller. In fact, in so far as false entries in such reports are concerned, a contrary construction would very largely destroy the efficiency of the statute. While penal statutes are generally strictly construed, yet, like all other statutes, they are given the meaning which the legislative body enacting them clearly intended them to have. And, when the evil sought to be cured is clearly understood, such a construction will be adopted, if at all admissible, as will give the statute its intended and proper effect.

We insist that it is not at all unreasonable to so construe the clause in said section 5209, "to deceive * * * any agent appointed to examine the affairs of any such association," as to include the Comptroller of the Currency. While he is not required by statute to make personal examination of an association's books, yet by virtue of his power to appoint bank examiners, to have the bank's affairs examined whenever he may deem proper, to keep himself thoroughly and accurately informed as to the bank's condition, and to have it under the circumstances above enumerated placed in the hands of a receiver, and its charter forfeited, he is necessarily, when appointed, vested with the right to examine its books in person, and is, both in theory and in fact, an agent appointed to examine the affairs of every national bank.

Again, as above shown, the examiners are all appointed by him and are but his agents, and the acts performed by his agents are, in contemplation of law, his own acts; and since the object of every examination is to give information to the comptroller, as he alone and not the examiner has the power to act, the purpose of every false entry in a report must be primarily to deceive the comptroller, though the deception be practiced through the examiner.

The clause of this section which declares it an offense to make false entries in a report, has been liberally construed by the courts. For illustration, it has been held that the report in which the false entry appears need not be one made pursuant to a request

of the comptroller, or according to a form or at a time prescribed by him, under section 5211, Revised Statutes.

United States v. *Hughitt*, 45 Fed., 47;
United States v. *Booker*, 80 Fed., 376;
Bacon v. *United States* (C. C. A. 8 Cir.), 97 Fed., 35;

and in *Cochran* v. *United States* (157 U. S., 286, 289) this court held that an assistant cashier could be held liable for making a false entry in a report to the comptroller, although under section 5211, Revised Statutes, the report is required to be made by the association and sworn to by the president and cashier.

For the foregoing reasons it is insisted that the motion to quash and the demurrer to the indictment should be overruled, and the judgment of the court below should be reversed, and the cause be remanded for trial.

J. A. FOWLER,
Assistant Attorney-General.

OCTOBER, 1909.

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No. 236.

Supreme Court of the United States

OCTOBER TERM, 1909.

[redacted]

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
Clerk.

THE UNITED STATES,
Plaintiff in Error.

vs.

JOHN A. CORBETT, GIDEON E. NEWMAN AND LEROY E. McGILL,
Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

Brief and Argument of Defendants in Error.

T. J. CONNOR,
Counsel for defendants in Error.

Supreme Court of the United States

OCTOBER TERM, 1908.

No. 505.

THE UNITED STATES,

Plaintiff in Error.

vs.

JOHN A. CORBETT, GIDEON E. NEWMAN AND LEROY E. McGILL,

Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

Brief and Argument of Defendants in Error.

STATEMENT OF THE CASE.

The defendants were indicted at the December 1907 Term of the District Court for an alleged violation of Sec. 5209 Rev. St. U. S. The indictment which is contained in the record, page 2 to 10 inclusive, contains six counts; all in substantially the same form and each attempting to charge the defendant, Corbett with violating Section 5209 by making a false entry in a report made to the comptroller of the currency, pursuant to law of

the condition of the First National Bank of Ladysmith, a National Banking Association, of which he was Cashier, at the close of business on the 14th day of March 1907, with intent thereby to injure and defraud said association and to *deceive* an agent appointed to examine the affairs of such association, *to-wit*: *the Comptroller of the Currency of the United States*, and also to charge the defendants Newman and McGill, Directors of the Association and respectively president and vice-president thereof, with having, with like intent, aided, abetted, incited, counseled and procured the Defendant Corbett to make such false entries.

The alleged falsity of said entries set forth in the several counts respectively was as follows:

1st Count: That the amount of bad debts then owing the Association was stated to be, $100.00: Whereas the bad debts then amounted to $799.18. (Page 3)

2nd Count: That there was no suspended and over due paper; whereas there was such paper to the amount of $9,988.83. (Page 4).

3rd Count: That the amount of the liability of the defendant Newman, then president of the bank, as indorser or guarantor on notes held by it, was $427.78; whereas such liability amounted to $989.99. (Page 5)

4th Count: That it was stated that the bank held title to real estate derived from M. T. Davis, carried on the books at $523.38, value and actually worth $1,000.00; whereas it only held such land as security for indebtedness due from said Davis. (Pages 6 and 7.)

5th Count: That it was stated that the bank owned real estate, the title to which was derived from the Level Land Swivel Plow Company, worth $1500.00 and carried on the books

at $631.27; whereas such land was held as Security for an indebtedness of said Plow Company. (Page 8)

6th Count: That it was stated that the bank owned real estate, the title to which was derived from O. E. Peterson, carried on the books at $2500.00 and worth $5,000.00; whereas such realty was held as security for the indebtedness of said Peterson. (Page 9)

In none of the counts of the indictment is it anywhere stated that either of the defendants *knew* of the falsity of such alleged false statements, or that they were *wilfully* false.

At the June 1908 term and on June 4th, the defendants moved the court to quash so much and that part and allegation of each count of the indictment as charged that the acts alleged were committed by the defendant Corbett with intent to deceive *the Comptroller of the Currency* and that the defendants Newman and McGill aided or abetted in the commission of said acts.

The motion was reduced to writing and points out with precise certainty the portions to which it relates, (Pages 9 to 14 inclusive).

On June 5th, the court granted said motion and made an order quashing the aforesaid portions of said indictment and holding the same insufficient in law, (Page 16).

The defendants also demurred to each count of such indictment for insufficiency, (Pages 15-16), which demurrer was sustained by the court by a further order also made on June 5th, (page 17). And on the same day the court filed a written opinion setting forth the grounds of its decision which is a part of the record herein, (Pages 17-18-19).

The plaintiff's assignment of error separately specifies each of the foregoing orders as error, (Page 20). And the writ herein directs the transmission of the record, *if the decision is*

based on construction of Sec. 5209 of the Revised Statutes of the United States, (Page 21).

BRIEF AND ARGUMENT.

I.

This court has power to review the record here, if at all, only by virtue of the Act of March 2nd, 1907, which allows such review only when the decision is based upon the invalidity or construction of the statute, upon which the indictment is founded.

At the outset the question arises; has the court jurisdiction to review the errors here assigned?

Before the court below made its ruling on the demurrer the portions of each count having reference to intent *to deceive the comptroller of the currency* had already been quashed and all that remained thereof for the court to pass upon was the portions attempting to charge an intent to *injure and defraud* the bank. There was nothing left calling for any interpretation or construction of the Statute: nothing for the court to do but construe the indictment, (not the statute.) And the court merely held, (and correctly too, as we show in another section hereof), that the portions of the indictment under consideration i. e., the charge of intent to *injure and defraud the bank* was not sufficiently stated. Indeed, in the last paragraph of the opinion of the court below (page 18), it is in effect stated that such was the basis of the decision.

For convenience we here quote the portion of the opinion referred to:

"The indictment also charges that entries were made with intent to injure and defraud the bank itself, but how this could be does not appear. It is barely possible that some

harm might indirectly have come to the bank by the publication of the false report in the vicinity of the place where the bank was located, but this possibility is not sufficient to show the definite intent shown by the statute. The report must have been made with the purpose on the part of those signing it to injure and defraud the bank. The report could not possibly change the actual condition of the bank, and a false report showing a better condition than in fact existed might as readily be a benefit to the bank as a detriment. At all events, the detriment would be merely speculative, insufficient to afford proof of a positive intent to injure and defraud the bank."

This opinion having been made a part of the record at the request of the plaintiff is conclusive here.

Jacks vs. Helena, 115 U. S. 288.

Krieger vs. Railroad Co. 125 U. S. 39.

In connection with the foregoing proposition, we refer to page 8 and following pages of this brief.

It cannot be said that the court below in quashing the other portions of the several counts of the indictment, i. e., the charge of intent to deceive the Comptroller of the Currency, was called upon to either interpret or construe the statute, Sec. 5209.

We therefore submit that this court is without jurisdiction to review either the first order quashing a portion of the indictment or the subsequent one sustained the demurrer because the court below merely held that the facts charged in the indictment were not within the statute and therefore the indictment and not the statute was interpreed, the case of United States vs. Kietel, 211 U. S., 370., having no application.

II.

If the court concludes that it has jurisdiction then the decision below was right and should be affirmed.

The prosecution is under Sec. 5208 R. S. U. S., which for convenience we print here as follows:

"Every president, director, etc .....who makes any false entry in any book, report or statement of the association with *intent to injure or defraud* the association or any other company, body politic or corporate or any individual person, or to deceive any officer of the association or agent appointed to examine the affairs of such association; and *every person who with like intent aids or abets* any officer, clerk or agent in any violation of this section shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years nor more than ten."

The statute though defining the offense as a misdemeanor, in fact makes it a felony.

United States vs. Cadwallader 59. Fed. Rep. 677.

And cases from this court there cited.

The crime is an infamous one:

United States vs. DeWait 128 U. S. 393.

Fulsom vs. United States, 160 U. S. 122.

The severity of the punishment negatives the idea of any intent to punish mere technical violations and the statute being highly penal will be strictly construed.

United States vs. Eqs, 496 Fed. Rep. 825.

United States vs. Potter 56 Id. 97.

To make the crime complete under the statute, the following conditions must exist:

1st: A false entry must be made.

2nd: It must be made with intent to injure or defraud either (a) the bank itself, (b) any other company, body politic or corporation, or individual or person: or (c) to deceive any officer of the bank or any agent appointed to examine its affairs.

The attempted charge here is an intent to deceive *the Comptroller of the Currency* and to injure and defraud the bank.

These in their order:

Because each count in the indictment specifically names the *Comptroller of the Currency* as the agent intended to be deceived by the alleged false entry, and limits the charge accordingly, no other agent need be considered.

Is the Comptroller of the Currency an agent appointed to examine the affairs of National Banks within the meaning of the statute? If not, the order quashing portions of the indictment was right; otherwise, it was wrong.

In practice the Comptroller of the Currency makes no examinations of banks as is known to every one. No law authorizes him to make examinations. True, he may with the approval of the Secretary of theTreasury appoint agents to make examinations, Section 5240 Rev. St., and these agents may examine the officers of the bank under oath., but no such powers are given the Comptroller, who indeed, cannot even appoint an agent to examine without the approval of the Secretary of the Treasury. Sec. 5240 Revised Statutes. Under the conditions, it cannot be said that the Comptroller isb an agent appointed to examine. Reading, filing and publishing such report does not constitute him an Examiner or an agent appointed to examine.

The precise question here involved has been passed upon only twice so far as we have been able to find.

See Clement vs. United States 149. Fed. Rep. 305 (317)

United States vs. Barton 10 Fed. Rep. 874.

In the case first above cited the court of appeals of the 8th

Circuit say of an indictment under the section we are considering:

"It is next urged that the allegation that the entry was made in the report "with intent to deceive the Comptroller of the Currency and any agent who might be appointed to examine the affairs of the bank" was immaterial. That is quite correct so far as the allegation concerning the intent to deceive the Comptroller is concerned. Such intent is not of those requisite under section 5209 to constitute an offense."

And in the case last cited the Circuit Court of the Southern District of New York, speaking of an indictment identical with that in the case at bar say, "The Comptroller of the Currency is not an agent appointed to examine the affairs of a National Banking Association within the meaning of this statute."

We have we think, examined all of the cases where the question under consideration may have been involved but find none except those above cited, where the question has been decided.

It follows therefore that the indictment cannot be sustained by the attempt to charge intent to deceive the Comptroller of the Currency.

It then only remains to consider the remaining portion attempting to charge intent to *injure and defraud* the bank.

At the outset, we direct attention to the fact that in each count of the indictment, the alleged false entry is charged to have been made in a report to the Comptroller of the Currency and not to the Association or any of its officers and it is not charged that false books were kept or any false entries made, other than those in the report of the Comptroller and described in the indictment. We can see how a banking association might

be injured through the making of false entries in its books or through false reports made to it or its officers by those entrusted with its affairs and how the intent to injure and defraud might be inferred through the mere making of such reports or entries, but confess our inability to see by what possibility the bank could be injured through the medium of a false report to the Comptroller of the Currency. Such report might be as well calculated to be of benefit to the bank as injurious to it. Indeed, a glance at the particular entries under consideration discloses that each such entry if effective at all, or for any purpose, would tend to the bank's benefit by strengthening its credit, rather than operate to its injury. Each such entries pertain wholly to a matter necessarily within the knowledge of the association, which could not be injured by any false entry or statement respecting a matter of which it had full knowledge as to the true facts. There is no suggestion in any of the counts that either of the defendants sought by the making of the alleged entries to secure any advantage over the bank for himself, or any other person, either pecuniary or otherwise. Nor is it anywhere suggested that the report containing the alleged false entries would, or by any possibility, might ever come to the knowledge of any other officer or stockholder of the association and it is inconceivable that the actual condition of the bank could be actually changed by anything contained in any of such entries, be they true or false. As hitherto suggested, the statute is highly penal and the offense defined by it an infamous one, on familiar principles to be strictly construed. And while we are aware that in cases of misdemeanor and in some other instances of purely statutory offenses, it may be sufficient in an indictment to state the offense in the language of the statute, such is not the rule applicable to indictments for offenses of the character of those here under consideration for reasons

sufficiently pointed out by this Court in the United States vs. Briton, 107 U. S., 655 U. S.

Not only have the words injure and defraud as used in this statute acquired no such definite and fixed meaning in the law as to fully apprise the accused of the nature of the accusation against him and to establish identity of the offense sufficiently to enable him to plead with it in bar to further prosecution, but it also appears from an examination of the particular false entries in the report to the Comptroller attempted to be charged, that the association actually could not have been either injured or defrauded by such false entries or report. If any deception has been attempted, it does not come within the statute because it was not calculated to affect injuriously, the rights of the bank which could be neither injured or defrauded by it. Nor could any advantage to the defendants or any one else except the bank itself result from it. The opinion of this court in United States vs. Briton, supra, is strongly persuasive, and indeed, even conclusive on the proposition under consideration. In that case, speaking of the portion of section 5219, relating to willful misapplication of funds of banking associations, the Court through Mr. Justice Woods, say:

"We are, therefore, of opinion that the willful misapplication of the moneys and funds of the banking association, which is made an offense by section 5209, means something different from the acts of official maladministration referred to in section 5239, and it must be a willful misapplication for the use or benefit of the party charged, *or of some person or company other than the association*, with intent to injure and defraud the association or some other body corporate or some natural person.

As the counts under consideration, namely,count 77, and

the similar counts down to and including count 96, do not show that the willful misapplication therein alleged was made by the defendant for his own use, benefit, or advantage, but for the use of the association, we are of opinion that they do not allege an offense under section 5209, and are, therefore, insufficient and bad. The counts are, in our opinion, bad also for repugnancy. They aver that the defendant purchased the shares of the association and held them in trust for the association. This charge, without further averments, is clearly repugnant. It is true that it is possible for an officer of a banking association, with intent to defraud it, to misappropriate its funds in the purchase for its use of its own stock. But the count which avers such an act should also make other averments to show that the application was not merely a use of the money for the benefit of the association forbidden by law, but a criminal misapplication, by which it was possible that the association could be defrauded.

For the reasons assigned, the counts next following, numbered from 97 to 116, inclusive, which are similar to count 77, except that they severally fail to aver that the act therein charged was done with intent to injure and defraud, must be held to be insufficient. The counts last mentioned, as well as the counts numbered from 56 to 76, inclusive, are bad for the further reason that they fail to aver any intent to injure and defraud mentioned in section 5209. The intent to injure and defraud is an essential ingredient to every offense specified in the section, and the failure to aver the intent is a fatal defect in the counts in which it occurs."

This case also points out clearly what is and what is not a good pleading under the section of the statute under consideration and demonstrates we think that the mere statement of

the conclusion of the framers of the indictment that the acts charged were with intent to injure and defraud, are deprived of any force they otherwise might have had by further statement in each count of the precise character of each alleged false entry.

See also United States vs. Harper, 33 Fed. Rep. 471.

It is therefore respectfully submitted that the Writ of Error herein should be dismissed for the reasons hereinbefore set forth, or the decisions sought to be reviewed should be affirmed, because it appears from the record herein, that the indictment and each count thereof, is insufficient in law and no offense against the United States is charged therein.

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